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Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: Regulation Z - Proposed Rule, Docket # R-1167
Regulation B – Proposed Rule, Docket # R-7 768
Regulation E – Proposed Rule, Docket # R-1 769
Regulation M – Proposed Rule, Docket # R-1170
Regulation DD – Proposed Rule, Docket # R-7171

Dear Ms. Johnson:

Thank you for the opportunity to comment on the proposed changes to Regulations Z, B, E, M, and DD (the "Proposed Rules") of the Board of Governors of the Federal Reserve System (the "Board"), implementing the Truth in Lending Act ("TILA"), the Equal Credit Opportunity Act ("ECOA"), the Electronic Funds Transfer Act ("EFTA), the Consumer Leasing Act ("CLA"), and the Truth in Savings Act ("TISA"). Household/HSBC's Consumer Lending retail branches ("Household/HSBC"), respectfully provides comments to the Proposed Rules.

The Consumer Lending retail branches primarily engage in the business of originating closed-end and open-end unsecured and real estate secured loans. As such, while the proposed changes to all the Regulations will impact Household International, Inc. subsidiaries, my comments will focus on the specific impact of the proposed changes to Regulation Z.

Backsround:

The Board is proposing to amend the regulations cited above to provide a uniform definition of the term "clear and conspicuous" among the Board's regulations generally. Specifically, the Board is proposing incorporating into these existing rules the relatively new "clear and conspicuous" standard from Regulation P, which implements the privacy disclosure requirements of the Cramm-Leach-Bliley Act. The stated intention of this revision is to "help ensure that consumers receive noticeable and understandable information that is

required by law in connection with obtaining consumer financial products and services." In addition, the preamble expresses the belief that "consistency among the regulations should facilitate compliance by institutions."

Household/HSBC fully supports ongoing industry and regulatory efforts to provide useable, clear information to consumers regarding financial products. However, we fear that the changes contained in the Proposed Rules may fail to advance these shared goals. Moreover, because these changes could mandate the revision of virtually every document, advertisement, or page on a financial institution's website that are sent or used by consumers, the costs to the industry are potentially enormous, and should well exceed the Board's estimate under the Paperwork Reduction Act that "the revisions would not increase the paperwork burden of creditors." These compliance costs are compounded by the potential litigation exposure that could result from the elimination of decades of jurisprudence concerning disclosure standards under the Board's affected regulations. While costs alone may not constitute sufficient reason to withdraw a proposal that is intended to enhance consumer protection, we are also concerned that the Proposal lacks documentation or other explanatory information that demonstrates how the new standard will meet those intentions, or how it will facilitate compliance by affected financial institutions. In this regard, and as further discussed below, we respectfully disagree with the assertion that the standard expressed in Regulation P "articulates with greater precision" the duty to provide disclosures that consumers will notice and understand. With these comments in mind, we suggest that the Proposal be withdrawn in its entirety, and that any specific regulatory concerns regarding consumer disclosures be addressed on a case by case basis, as the Board has done in the past.[1]

Regulatory language is ambiguous and fails to create Safe Harbor

We have a significant concern regarding the proposed changes to the definition of "clear and conspicuous", including the proposed comments to § 226.2(a)(27). Use of terminology that, in and of itself, is ambiguous and subject to interpretation, such as "reasonably understandable" and "designed to call attention to the nature and significance of the information in the disclosure," will lead to less clarity for consumers and materially increased litigation risk for lenders. Generally, creditors who are acting in conformance with the Model Forms or Official Staff commentary have a "safe harbor" in any suit brought under the TILA. Proposed Commentary to § 226.2(a)(27) does provide various indicators or measures of "reasonably understandable" including (l) presenting the information in the disclosure in clear, concise sentences, paragraphs and

[1] **See,** e.g., 65 **Fed. Reg.** 58, 903 (October 3, 2000) **(Final Rule** implementing changes to **Regulation Z's** definition of "clear and conspicuous" as it applies to information in the Schumer **Box.)**

sections; (2) using short explanatory sentences or bullet points whenever possible; (3) avoiding legal and highly technical business terminology whenever possible; and (4) avoiding explanations that are imprecise and readily subject to different interpretations. However, it does not provide any safe harbor for creditors nor any specific examples of what type of language would be deemed to meet the new standards. All of these factors are subject to interpretation. Who determines what constitutes "clear and concise" or what "'whenever possible" means?

Even more troubling is the recommendation to make the same language changes proposed for § 226.2(a)(27), as discussed above, applicable to open-end loans by revising § 226.5(a)(1) to read "See § 226.2(a)(27) and accompanying comments." TILA and Regulation Z have long recognized the inherent differences between closed-end and open-end forms of credit, applying different standards concerning what constitutes a material disclosure and how material terms such as Annual Percentage Rate are derived. To attempt to apply uniform standards to loan products that, while containing some surface similarities, do retain some inherent differences, deviates from the Board's long held position without leading to improved clarity for consumers and a facilitated compliance process for creditors. The home equity open-end disclosures mandated by § 226.5b are numerous and detailed. Creditors making open-end home equity loans are required to disclose:

1. Retention of Information statement
2. Conditions for disclosed terms
3. Security interest and risk to home statements
4. Possible actions by creditor
5. Payment terms, including length of draw and repayment period; explanation of how the minimum payment will be determined and the timing of the payments
6. An example, based on a $10.000 outstanding balance and a recent annual percentage rate showing the minimum payment, any balloon payment and the time it would take to repay the $10,000 outstanding balance if the consumer made only the minimum payment and obtained no additional advances;
7. The Annual Percentage Rate
8. Fees imposed by the creditor
9. Fees imposed by third parties to open plan
10. Transaction requirements
11. Tax implications; and
12. For variable rate plans, several additional detailed disclosures, including a 15-year historical table showing how annual percentage

rates and payments would have been affected by index-value changes implemented in accordance with the plan.

Creditors are also required to disclose much of the information required by § 226.513 in the borrower' s loan agreement *[See* Regulation Z § 226.6]. Given the extent of the disclosures required, complying with the "designed to call attention" standard by using any or all of the suggested methods provided in proposed Commentary to § 226.2(a)(27) [i.e. use of a plain-language heading to call attention to the disclosure, wide margins and ample line spacing, boldface or italics for key words, shading or sidebars] would result in all of the disclosures being equally prominent as opposed to more conspicuous. Given the new standard proposed in the revised Commentary, it is questionable that the model language proposed in Regulation Z would be deemed to comply *with* these new standards. For example, the balance computation method model clauses contained in Appendix G-1, a required disclosure for open-end loans, contains language that could be considered "readily subject to different interpretations" or as containing "legal and highly technical...terminology."

To the extent that revisions and additions to existing staff commentary serve the purpose of insuring consistency of the legally mandated disclosures among all lenders, thus enabling consumers to better compare loan options available to them from different lenders, this is a worthwhile endeavor. We believe, however, that each and every one of these factors identified in the proposed Commentary, whether applied to closed-end or open-end loans, will result in confusion to creditors attempting to comply with the new requirements, as well as regulators, examiners and Courts, all of whom will have to determine the true intent and meaning of the language. Implementation of these changes will also serve to create a vacuum where there was once approximately thirty (30) years' worth of interpretive opinions as to the meaning of "clear and conspicuous" generated by courts, regulators and commentators. This will leave creditors in the lurch and at increased risk of compliance and litigation exposure, resulting in additional costs to creditors, who, in turn, will pass on the increased cost of doing business to consumers.

Suggested changes to Right of Rescission

We are concerned that the proposed Commentary changes to § 226.25(d)(4) are unclear and will lead to significant litigation. Existing Commentary to this section allows for the possibility that, in some circumstances, the equities might dictate modifications to the procedures outlined in § 226.15(d)(2) and (3). This is especially critical when a consumer elects *to* exercise their rescission right some time after the consummation of the loan [e.g. two years later]. The proposed changes would seem to negate the ability of a Court to effectuate these modifications. Upon review of the circumstances, including the material

disclosures provided to a consumer, a court might determine that a consumer has not retained an existing right to rescind their transaction. As drafted, the proposed Commentary would seem to create an absolute right to rescind, despite mitigating or other factors, or any determination made by a Court. We believe this change will effectively eliminate the balance of equities that is currently inherent and necessary in the rescission process.

Paperwork Reduction Act

In this section of the Proposals, the Board estimates that the proposed definitional changes will create no annual cost burden on the banks affected by the changes. We respectfully disagree. As written, the new language effectively includes minimum typeface sizes, increased margins, and other requirements that would likely lengthen every printed disclosure made to consumers. Added length requires added paper at an additional cost. Additional paper creates additional weight, which requires additional postage. It is quite possible, therefore, that the proposed changes could result in costs to the industry measuring in the billions of dollars.

We appreciate the opportunity to comment on this proposal.

Sincerely,

Elizabeth De Paula Arias

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